

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DARRYL A. SMITH,

Defendant.

Criminal Action No.
15-00408-01-CR-W-DW

**MEMORANDUM OF MATTERS DISCUSSED AND
ACTION TAKEN AT PRETRIAL CONFERENCE**

Pursuant to the order of the Court en banc of the United States District Court for the Western District of Missouri, a pretrial conference was held in the above-entitled cause before me on December 28, 2016. Defendant Darryl Smith appeared in person and with retained counsel Willis Toney. The United States of America appeared by Assistant United States Attorney Jeffrey McCarther.

I. BACKGROUND

On December 16, 2015, an indictment was returned charging defendant with one count of conspiracy to distribute cocaine and cocaine base, in violation of 21 U.S.C. § 846; 15 counts of distributing cocaine, in violation of 21 U.S.C. § 841(a) and (b)(1)(C); four counts of distributing cocaine base, in violation of 21 U.S.C. § 841(a) and (b)(1)(C); one count of possessing with intent to distribute cocaine, in violation of 21 U.S.C. § 841(a) and (b)(1)(C); one count of possessing with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a) and (b)(1)(C); one count of possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c); and one count

of possessing a firearm after having been convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

Co-defendant Antwanette B. Howard is set for a change-of-plea hearing on January 5, 2017.

Co-defendant Kimani I. Sterling has never appeared on this indictment.

The following matters were discussed and action taken during the pretrial conference:

II. TRIAL COUNSEL

Mr. McCarther announced that he will be the trial counsel for the government. The case agent to be seated at counsel table is Detective James Armstead, KCPD.

Mr. Toney announced that he will be the trial counsel for defendant Darryl Smith.

III. OUTSTANDING MOTIONS

There are no pending motions in this case.

IV. TRIAL WITNESSES

Mr. McCarther announced that the government intends to call 12 witnesses without stipulations or 8 witnesses with stipulations during the trial.

Mr. Toney announced that defendant Darryl Smith intends to call no witnesses during the trial. The defendant may testify.

V. TRIAL EXHIBITS

Mr. McCarther announced that the government will offer approximately 75 exhibits in evidence during the trial.

Mr. Toney announced that defendant Darryl Smith will offer no exhibits in evidence during the trial.

VI. *RULE 404(b) EVIDENCE*

Mr. McCarther announced that the government will offer 404(b) or res gestae evidence during the trial.

Mr. Toney announced that defendant Darryl Smith will not offer 404(b) or res gestae evidence during the trial.

VII. *DEFENSES*

Mr. Toney announced that defendant Darryl Smith will rely on the defense of general denial.

VIII. *POSSIBLE DISPOSITION*

Mr. Toney stated this case is probably not for trial.

Mr. McCarther stated the government has proposed a plea agreement to defendant Darryl Smith.

IX. *STIPULATIONS*

Stipulations are likely as to chain of custody, chemist's reports, prior felony conviction, and interstate nexus of firearm.

X. *TRIAL TIME*

Counsel were in agreement that this case will take 3 days to try.

XI. *EXHIBIT LIST, VOIR DIRE AND INSTRUCTIONS*

The U. S. Magistrate Judge ordered:

That counsel for each party file and serve a list of exhibits he intends to offer in evidence at the trial of this case on the form entitled Exhibit Index and have all

available exhibits premarked using the stickers provided by the Clerk of Court by December 28, 2016;

That counsel for each party file and serve requested jury voir dire examination questions by or before noon, Wednesday, January 4, 2017;

That counsel for each party file and serve, in accordance with the requirements of Local Rule 51.1, requested jury instructions by or before noon, Wednesday, January 4, 2017. Counsel are requested to provide proposed jury instructions in both hard copy form, as required by Local Rule 51.1, and by e-mail to the trial judge's courtroom deputy.

That each party file all signed stipulations by or before noon, Wednesday, January 4, 2017;

That seven days before the trial date as reflected in the forthcoming trial letter, if there is not a scheduled change-of-plea hearing, the parties shall make available for the opposing party to inspect, copy or photograph (1) all premarked trial exhibits, (2) any written statements that will be used at trial, and (3) Rule 404(b) and res gestae evidence to be offered at trial.

XII. UNUSUAL QUESTIONS OF LAW

No motions in limine are anticipated. There are no unusual questions of law.

XII. TRIAL SETTING

All counsel and the defendant were informed that this case will be listed for trial on the joint criminal jury trial docket which commences on January 9, 2017.

/s/ Robert E. Larsen
ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
December 28, 2016